

**REMARKS**

Claims 1, 5-11, 13, 15, 17-20, 22, 23 and 41-48 are currently pending in this application. Claims 47 and 48 are new. No new matters has been added. Claims 1, 13, 20, and 42 are independent. Reconsideration and allowance of the subject application are respectfully requested.

**Double Patenting**

Claims 1, 5-11, 13, 15, 17-20, 22-24, 41-46 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4, 5, 3, 10, 11, 17, 18, 14, 20, 25, 26 of co-pending Application No. 10/989,992 in view of claim 1 10/765,536.

Applicants respectfully traverse this rejection as being moot in view of the amendments to the claims.

**Rejections under 35 U.S.C. 102(b) and 103(a)**

The examiner rejects claims 1, 5, 6, 13, 20 and 42 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under U.S.C. 103(a) as obvious over Sako et al./WO 02/37493 further considered with Timmermans et al. Applicants respectfully traverse this rejection.

The amended independent claims all now include the following features, *inter alia*, "physical mark information recorded as wobbled pits and straight

pits in a specific area of the lead-in area not writeable by end user recorders,” as recited in claim 1, and “wherein the physical mark information provides control information for controlling a reproduction of data recorded as straight pits on the data area and is formed along a modulated unique pattern,” as recited in claim 1. Applicants submit that Sato does not disclose “physical mark information recorded as wobbled pits and straight pits” in which data of the data area is recorded as straight pits. Compare, for example, Sato, column 18, line 64 to column 19, line 15, in which Sato discloses that additional information (e.g., copyright management information) is recorded at the lead-in area by wobbling the pits in secure medium, but the pits cannot be wobbled in less secure medium. Further, Sato does not disclose the physical mark information recorded as wobbled pits and straight pits in the lead-in area.

With regard to the combination of Sato and Timmermans, Applicants submit that Timmermans does not teach or suggest the above features either and therefore does not cure the deficiencies of Sato. For example, Timmermans does not teach the physical mark information recorded as wobbled pits and straight pits in the lead-in area.

Therefore, Applicants submit that independent claims 1, 13, 20, and 42 are allowable as are dependent claims 5-6, at least by depending from an allowable base claim.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to the claims as stated above, and further in view of Kuroda ('844).

Claims 8, 10, 15, 17, 19, 22, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to the claims as stated above, and further in view of Ha et al.

Claims 11, 18, 23, 24, 44, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims as stated above, and further in view of Official Notice.

Applicants respectfully traverse these rejections. Applicants submit that none of the additionally cited references, Kuroda, Ha, or the Official Notice taken by the Examiner, cure the deficiencies identified above with respect to Sato individually or in combination with Timmermans. Therefore, dependent claims 7-8, 10-11, 15, 17-9, 22-24, and 43-48 are allowable at least for depending on allowable base claims.

### **CONCLUSION**

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) hereby petition(s) for a two (2) month extension of time for filing a reply to the outstanding Office Action and submit the required \$460 extension fee herewith.

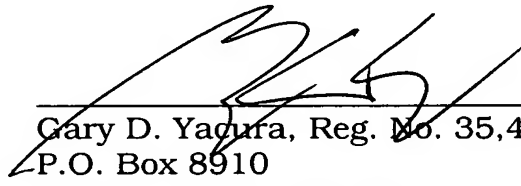
Should there be any outstanding matters that need to be resolved in the present application; the Examiner is respectfully requested to contact Gary D. Yacura, at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By



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